

MEMORANDUM

November 29, 2012

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: **Public Hearing:** Bill 31-12, Accessory Apartments - Licensing

Bill 31-12, Accessory Apartments - Licensing, sponsored by the Planning, Housing and Economic Development Committee, was introduced on November 13, 2012. The Council will conduct a worksession on Bill 31-12 and the Planning, Housing, and Economic Development Committee's recommendation on ZTA 12-11 on January 15, 2013.

Bill 31-12 would:

- 1) Require notice of the application by a sign posted on the property. The sign must be the same size as a sign for a special exception application and give an internet web address to allow interested residents to follow the status of the application and inform residents' of their opportunity to object to Department of Housing and Community Affairs (DHCA) findings.
- 2) Establish deadlines for review;
- 3) Require an accessory apartment to be the principal residences of the property owner; proof that the property is the owner's principal residence would be:
 - (a) the owner's most recent tax return;
 - (b) the owner's current driver's license, or
 - (c) the owner's real estate tax bill for the address of the proposed accessory apartment;
- 4) Allow an applicant to object to DHCA's findings if the application is denied;
- 5) Allow residents to object to DHCA's findings or to allege that on-street parking is inadequate;
- 6) Authorize the Hearing Examiner to hear objections;
- 7) Require DHCA to approve or deny the license based on the decision of the Hearing Examiner;
- 8) Allow a judicial review of the Hearing Examiner's decision;
- 9) Require DHCA to maintain a list and a map of licensed apartments; and
- 10) Provide a simple process to renew a license.

Although ZTA 12-11 is not the subject of the Council's December 4 public hearing, the 2 recommended actions are very much related. ZTA 12-11 as recommended by the Planning, Housing, and Economic Development Committee would allow some accessory apartments to be approved without a special exception. All accessory apartments require a license. The current licensing process does not require any notice, specific standards, or an opportunity for objections or appeal. Bill 31-12 is intended to compliment the Committee's recommendations on ZTA 12-11.

The Committee recommended approval of ZTA 12-11 to make accessory apartments a permitted use; however, if an applicant wanted a waiver of the minimum distance requirement or the on-site parking requirement, a special exception would be required. Such a special exception would be decided by the Hearing Examiner with an appeal allowed to the Board of Appeals. In some instances, the Committee also recommended the following zoning standards for all future accessory apartments:

Approval conditions	Committee's recommendation
<i>Limit one unit per one-family dwelling lot (non-agricultural zone)</i>	Allowed without regard to age of the house
<i>Part of the pre-existing principal dwelling</i>	No acreage distinction
<i>Additions to existing structure</i>	Allowed
<i>Separate structure</i>	Allowed if the lot is 1 acre or more in RE-2, RE-2C, and RE-1
<i>Occupancy of principal house</i>	Require the address to be the primary residence of the owner
<i>Registered living units</i>	Prohibited when an accessory apartment is approved
<i>External attributes</i>	Allow a separate side or rear yard entrance, a separate front entrance if it pre-existed the application, and a common front entrance
<i>Street Address</i>	Must be the same as the main dwelling
<i>Development standards</i>	Zoning classification controls; no minimum lot size
<i>Maximum number of people</i>	2 adults; no limit on minors except housing code
<i>Unit size</i>	Limit floor area to less than 50% of main dwelling but no larger than 2,500

<i>Excessive concentration</i>	Same but subject to waiver; no prohibition on back to back apartments
<i>Parking</i>	If there is an existing driveway, 1 on-site space required in addition to any required on-site place required for the main dwelling; If new driveway is required, 2 spaces in addition to main dwelling spaces
<i>Sunset provision</i>	Require a report by DHCA after the 2,000 th license is issued

This packet contains:

Bill 31-12

Legislative Request Report

Circle #

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Bill No. 31-12
Concerning: Accessory Apartments -
Licensing
Revised: November 8, 2012 Draft No. 1
Introduced: November 13, 2012
Expires: May 13, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: The Planning Housing, and Economic Development Committee

AN ACT to:

- (1) require an accessory apartment rental license issued by the Department of Housing and Community Affairs;
- (2) establish the standards for the issuance of an accessory apartment license;
- (3) require notice of the proposed accessory apartment;
- (4) authorize the Hearing Examiner to hear objections to the Department's findings concerning an accessory apartment rental license; and
- (5) generally amend the law governing an accessory apartment and appeals for rental licenses.

By amending

Montgomery County Code
Chapter 2, Administration
Sections 2-112 and 2-140
Chapter 29, Landlord-Tenant Relations
Sections 29-16, 29-19, and 29-26

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 2-140, 29-16, 29-19, and 29-26 are amended as follows:

2-140. Powers, duties and functions.

(a) The Office of Zoning and Administrative Hearings must:

- (1) schedule and conduct public hearings on any appeal or other matter assigned by law or by the County Council, County Executive, or other officer or body authorized to assign matters to a hearing examiner;
- (2) issue a subpoena, enforceable in any court with jurisdiction, when necessary to compel the attendance of a witness or production of a document at any hearing, and administer an oath to any witness;
- (3) allow each party in any hearing a reasonable opportunity to cross examine each witness not called by that party on matters within the scope of that witness' testimony;
- (4) forward a written report, with a recommendation for decision, to the body that assigned the matter, including findings of fact and conclusions of law where required or appropriate;
- (5) adopt regulations, subject to Council approval under method (2), to govern the conduct of public hearings and other activities of the Office.

(b) The Office may act as an administrative office or agency designated by the District Council, as prescribed in the Regional District Act (Article 28 of the Maryland Code).

(c) The Office may hear, and submit a written report and recommendation to the specified officer or body on, any:

- (1) petition to the County Council to grant, modify, or revoke a special exception, as provided in Chapter 59;
- (2) designation by the County Council of a geographic area as a community redevelopment area; [or]

(3) matter referred by the Board of Appeals under Section 2-112(b);
or

(4) objection to a finding made by the Director of the Department of Housing and Community Affairs concerning an application for an accessory apartment rental housing license under Section 29-26.

(d) When the County Executive or a designee must conduct an administrative hearing under any law, the Executive may authorize the Office of Zoning and Administrative Hearings to conduct the hearing or any particular class of hearings.

29-16. Required.

(a) The owner of a dwelling unit must obtain a rental housing license before operating the dwelling unit as rental housing. If the owner is a corporation, the corporation must be qualified to do business in Maryland under state law. Each owner must certify to the Department the name, address and telephone number of an agent who resides in Maryland and is qualified to accept service of process on behalf of the owner.

(b) The Director must issue [two] three classes of rental housing licenses. Class 1 is a multifamily rental housing license. Class 2 is a single-family rental housing license. Class 3 is a single-family accessory apartment license.

(c) A Class 1 rental housing license is required for each apartment complex and personal living quarters building, and for each multifamily dwelling unit operated as rental housing. A Class 2 rental housing license is required for each single-family dwelling unit operated as rental housing. A Class 3 license is required for each single-family residence with an

accessory apartment that does not have a special exception approved before {EFFECTIVE DATE}.

* * *

29-19. Licensing procedures.

- (a) To obtain a rental housing license, the prospective operator must apply on a form furnished by the Director and must pay the required fee. If the Director notifies the applicant of any violation of law within 30 days, the Director may issue a temporary license for a period of time the Director finds necessary to achieve compliance with all applicable laws.

(b) Accessory apartment rental license.

- (1) An owner of [an accessory apartment] a lot or parcel in a zone that permits accessory apartments may obtain [and keep] a license to operate an accessory apartment if [the occupancy of the accessory apartment is limited to]:

- [(1) One or more individuals who live and cook together as a single housekeeping unit and are related by:

- (A) Blood;
- (B) Marriage; or
- (C) Adoption; or

- (2) No more than 2 individuals who live and cook together as a single housekeeping unit.]

- (A) the owner places a sign on the lot of the proposed accessory apartment within 5 days after applying for the license unless a sign is required as part of an application for a special exception. The sign must:

- (i) be constructed of any durable material approved by the Director;

- (ii) be at least 30 inches above the ground at its lowest level;
- (iii) be at least 24 inches high and 36 inches wide;
- (iv) have only letters and numbers that are at least 4 inches high; and
- (v) include information that an application for an accessory apartment license was filed, the internet address of a web site to find the status of the application, and any other facts required by the Director.

(B) the principal dwelling on the lot or parcel required for the proposed accessory apartment is the owner's primary residence. Evidence of primary residence includes:

- (i) the owner's most recent Maryland income tax return;
- (ii) the owner's current Maryland driver's license, or
- (iii) the owner's real estate tax bill for the address of the proposed accessory apartment; and

(C) the Director finds that:

- (i) the accessory apartment satisfies the standards for an accessory apartment in Section 59-A-6.19; or
- (ii) the accessory apartment was approved under Article 59-G as a special exception.

(3) Upon receipt of an application for an accessory apartment license, the Director must:

- (A) send a copy of the application to the Office of Zoning and Administrative Hearings within 5 days after the date the application was filed;
- (B) inspect the lot or parcel identified in the application and the proposed accessory apartment;
- (C) complete a report on any repairs or improvements needed to approve the application;
- (D) issue a report on all required findings within 30 days after the date the application was filed;
- (E) post a copy of the Director's report on findings on the internet web site identified on the applicant's sign;
- (F) issue or deny a new license 30 days after the issuance of the Director's report unless:
 - (i) a timely objection is filed under Section 29-26; or
 - (ii) improvements to the property are required before the license may be approved.

(4) The Director may renew a license for an accessory apartment at the request of the applicant if

- (A) the applicant:
 - (i) attests that the number of occupants will not exceed the requirements of Section 26-5 and there will be no more than 2 residents in the apartment who are older than 18 years;
 - (ii) attests that one of the dwelling units on the lot or parcel will be the primary residence of the owner;
and

(iii) acknowledges that by obtaining a license the applicant gives the Director the right to inspect the lot or parcel including the accessory apartment.

(5) The Director may renew a Class 1 license for an accessory apartment that was approved as a special exception, as a Class 1 license if the conditions of the special exception remain in effect and the applicant is in compliance with those conditions,

(6) The Director must maintain a public list and map showing each Class 3 license and each accessory apartment with a Class 1 license.

(c) Where a rental building has not been completely constructed or renovated, the Director may issue a temporary license for that part of the building that has been completely constructed or renovated if the landlord has:

(1) obtained a temporary certificate of occupancy under Chapter 8;
and

(2) complied with all other applicable laws.

However, the temporary license expires when a license to operate the entire building is issued.

(d) The Director must not issue a rental housing license for a personal living quarters building unless the applicant has submitted a satisfactory management plan. The plan must specify who will manage the building and explain what the manager will do to achieve acceptable levels of safety, sanitation, and security in the building's common areas.

(e) Each licensee must give the Department a current address for the receipt of mail. If the Department sends first class or certified mail to the licensee at the designated address and the mail is returned as

undeliverable, the Department may treat the mail as having been received.

* * *

29-26. Appeals and Objections.

(a) Any person aggrieved by a final action of the Commission rendered under this Article may appeal to the Circuit Court [in accordance with] under the Maryland Rules of Procedure for [a review of the action] judicial review of a final administrative agency decision. An appeal does not stay enforcement of the Commission's order.

(b) Objections concerning any new accessory apartment license.

(1) The applicant for a new license for an accessory apartment may object to an adverse finding of fact by the Director by filing an objection and a request for a hearing with the Office of Zoning and Administrative Hearings.

(2) Any other aggrieved person may file an objection and request for a hearing with the Office of Zoning and Administrative Hearings by:

(A) objecting to any finding of fact by the Director; or

(B) alleging that on-street parking is inadequate when a special exception is not required.

(3) A request for a review by the Hearing Examiner must be submitted to the Office of Zoning and Administrative Hearings within 30 days after the date of the Director's report and must state the basis for the objection.

(4) The Hearing Examiner must send notice of an adjudicatory hearing to the applicant and any aggrieved person who filed an objection within 5 days after the objection is received and

conduct any such hearing within 20 days of the date the objection is received unless the Hearing Examiner determines that necessary parties are unable to meet that schedule.

(5) The Hearing Examiner may only decide the issues raised by the objection.

(6) The Hearing Examiner may find that on-street parking is inadequate if:

(A) the available on-street parking for residents within 300 feet of the proposed accessory apartment would not permit a resident to park on-street near his or her residence on a regular basis; and

(B) the proposed accessory apartment is likely to reduce the available on-street parking within 300 feet of the proposed accessory apartment.

(7) The Hearing Examiner may find that more than the minimum on-site parking must be required as a condition of the license.

(8) The Hearing Examiner must issue a final decision within 30 days after the close of the adjudicatory hearing.

(9) The Director must issue or deny the license based on the final decision of the Hearing Examiner.

(iii) (10) Any aggrieved party who objected under subsection 29-26(b) may request the Circuit Court to review the Hearing Examiner's final decision under the Maryland Rules of Procedure. An appeal to the Circuit Court does not automatically stay the Director's authority to grant a license.

LEGISLATIVE REQUEST REPORT

Bill 31-12

Accessory Apartments - Licensing

DESCRIPTION:	This Bill establishes a process for accessory apartment licensing including noticing, standards for issuance and renewal, objections and appeals
PROBLEM:	ZTA 12-11 as introduced, currently pending before the Council, would allow some accessory apartments to be approved without a special exception. All accessory apartments require a license. The current licensing process does not require any notice, specific standards, or an opportunity for objections or appeals.
GOALS AND OBJECTIVES:	This Bill would establish a process for accessory apartment licenses including noticing, standards for issuance and renewal, objections and appeals
COORDINATION:	DHCA, MNCPPC, BOA, OZHA
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Jeffrey Zyontz, (240) 777-7896
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Class A violation